

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHON DeSHIELDS,	§
	§ No. 371, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0212002900
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 31, 2011

Decided: September 9, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 9th day of September 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Stephon DeShields, filed an appeal from the Superior Court's July 19, 2011 order denying his second motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record reflects that, in January 2004, DeShields pleaded guilty to Manslaughter as a lesser-included offense of Murder in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony ("PDWDCF"). He was sentenced to a total of 20 years of Level V incarceration, to be suspended after 17 years for probation. Specifically on the PDWDCF conviction, he was sentenced to 10 years at Level V. DeShields did not file a direct appeal of his convictions. Shortly after being sentenced, DeShields filed a motion for correction of his sentence, which the Superior Court denied.

(3) In this appeal from the Superior Court's denial of his second motion for correction of sentence, DeShields claims that the Superior Court erred under the criminal statutes and the SENTAC guidelines by enhancing his sentence on the basis of convictions that occurred during the pendency of his murder prosecution.

(4) The narrow function of Rule 35(a) is to permit correction of an illegal sentence, not to re-examine alleged errors that occurred during the

¹ Supr. Ct. R. 25(a).

trial or other proceedings prior to the imposition of sentence.² Under Delaware law, a sentence is illegal only if it exceeds the statutory limits, violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance or is a sentence that was not authorized by the judgment of conviction.³

(5) Because DeShields's PDWDCF sentence does not exceed the statutory maximum,⁴ does not implicate double jeopardy and is neither ambiguous nor contradictory, he is not entitled to relief under Rule 35(a). Even if DeShields's claim is that the sentence was imposed in an illegal manner, it is unavailing. Under Rule 35(b), DeShields's motion is untimely because it was filed well in excess of 90 days following imposition of the sentence. Moreover, it is well-settled that the SENTAC guidelines are non-binding and provide no basis for appeal.⁵

(6) To the extent that DeShields's claim is based on Policy 5 of the SENTAC guidelines, that policy is inapplicable because it only prohibits upward departures on the basis of convictions for which the defendant has not yet been sentenced. The record before us reflects that, at the time he was

² *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

³ *Id.*

⁴ Del. Code Ann. tit. 11, §§ 1447 and 4205(b) (2).

⁵ *Mayes v. State*, 604 A.2d 839, 845 (Del. 1992).

sentenced for PDWDCF, DeShields already had been sentenced on the convictions he claims were improperly considered by the sentencing judge.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice